

Appl. No.: 09/819,947

Amendment Dated: 3/21/2004

Reply to OA of 9/21/2004

REMARKS

This amendment is responsive to the Action dated September 21, 2004. With this response, claim 9 has been withdrawn from examination, without prejudice, leaving claims 1-8 and 10-41 as originally presented as currently pending.

Applicant believes the foregoing amendments and following remarks to be fully-responsive to the outstanding action. Upon entry of this response, reconsideration of the pending application is respectfully requested.

§112, second paragraph Rejection of Claims 9, 16, 29 and 33

In paragraphs 1 and 2 of the Action, claims 9, 16, 29 and 33 were rejected as being vague and indefinite pursuant to 35 USC §112, second paragraph. In response, Applicant offers the following remarks.

In an effort to expedite prosecution of this matter, Applicant has withdrawn claim 9 from consideration, without prejudice. In view of such amendment, the rejection of such claim is now rendered moot.

With regard to claims 16, 29 and 33 the Action objects to use of the term "estimating a level of uplink traffic", as requiring a precise definition. In response, Applicant respectfully disagrees that such claim is vague and indefinite.

In particular, Applicant respectfully submits that the originally filed specification, claims and/or figures provide adequate support for such claim language. As but one example, Applicant references page 23, lines 3-10 wherein estimating the level of uplink traffic may be performed through estimating a loading level of the uplink traffic.

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In view of the foregoing, Applicant respectfully requests that the §112, second paragraph rejection of claims 16, 29 and 33 be withdrawn.

§102(e) Rejection of claims 1, 3, 5, 11-16, 21, 22, 24, 26-29, 30-33, 34, 36 and 41

In paragraphs 3 and 4 of the Action, claims 1, 3, 5, 11-16, 21, 22, 24, 26-29, 30-33, 34, 36 and 41 were rejected as being anticipated by a patent issued to Wallentin, et al. (USP 6,594,238), pursuant to 35 USC §102(e). In response, Applicant respectfully traverses the rejection of such claims.

In particular, despite the characterization in the Action, Applicant has failed to find any support in the Wallentin reference that teaches each and every element of, e.g., rejected claims 1, 21, 30, 34 and 41 as presented in such claims. Applicant notes that an anticipation rejection under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegall Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). "The *identical invention* must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

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In this case, the Wallentin reference simply fails to teach or fairly suggest a mechanism for scheduling the transmission of content as presented in, e.g., rejected claims 1, 21, 30, 34 and 41. By way of example, and not limitation, the passage cited in the Action (col. 1, ln. 39 and col. 4, lines 37-38) fails to teach or fairly suggest to one skilled in the art a base transceiver station generating a schedule that includes time slots and frequency blocks. Rather, the citations refer broadly to a GSM system in the first instance, and then an implementation of a WCDMA system in the second instance. Neither of such passages even mention generating a transmission schedule.

In this regard, Applicant respectfully submits that the Action has failed to establish the requisite prima facie basis to support the rejection of, e.g., rejected claims 1, 21, 30, 34 and 41. Accordingly, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

Applicant notes that claims 3, 5, 11-16, 22, 24, 26-29, 31-33, and 36 each depend from patentable base claims 1, 21, 30, 34 or 41, respectively. Accordingly, in addition to any independent basis for patentability, Applicant respectfully submits that such claims are similarly allowable over the Wallentin reference by virtue of at least such dependency. Thus, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

103(a) Rejection of claims 2, 4, 6-19, 17-20, 23, 25, 27, 35 and 37-40

In paragraphs 5-11 of the Action, claims 2, 4, 6-19, 17-20, 23, 25, 27, 35 and 37-40 of the application were rejected as being unpatentable over Wallentin in view of various references, pursuant to 35 USC §103(a). In response, Applicant respectfully traverses the rejection of such claims.

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As presented above, claim 9 has been withdrawn, without prejudice, rendering any rejection thereof moot.

With regard to the rejection of claims 2, 4, 6-8, 10-19, 17-20, 23, 25, 27, 35 and 37-40, Applicant notes that none of the references cited in combination with the Wallentin reference were cited to cure the deficiencies in the §102(e) rejection of claims 1, 21, 30, 34 and 41, described above. A prima facie basis for rejection of claims 1, 21, 30, 34 and 41 having not yet been established, Applicant respectfully submits that such claims are allowable as originally presented.

Insofar as claims 2, 4, 6-19, 17-20, 23, 25, 27, 35 and 37-40 depend from patentable base claims 1, 21, 30, 34 or 41, respectively, Applicant respectfully submits that such claims are similarly patentable by virtue of such dependency, in addition to any independent basis for patentability. Accordingly, Applicant respectfully requests that the §103(a) rejection of claims 2, 4, 6-19, 17-20, 23, 25, 27, 35 and 37-40 be withdrawn.

CONCLUSION

Applicant respectfully submits that claims 1-8 and 10-41 are in condition for allowance and such action is earnestly solicited. *The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.*

Please charge any shortages and credit any overcharges to our Deposit Account number 50-0221.

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Respectfully submitted,
MANISH AIRY

Date: March 21, 2005

by:



Michael A. Proksch

Reg. No. 43,021

Attorney for Assignee Intel Corporation

Intel Corporation
c/o Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
503.264.3059